

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOE HAND PROMOTIONS, INC.,	:	Case No. 3:10-cv-356
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
YOUNES DAYTON INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER TO SHOW CAUSE

Plaintiff filed the Complaint in this case on September 23, 2010, more than 120 days ago. The record, however, contains no indication that Defendants either waived service of process or were properly served.

Pursuant to Fed.R.Civ.P. 4(m):

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

“Unless a named defendant agrees to waive service, the summons continues to be the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights.” *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351, 119 S. Ct. 1322 (1999).

Indeed, absent either waiver or proper service of process, this Court does not have personal jurisdiction over Defendants. *See Friedman v. Estate of Presser*, 929 F.2d 1151,

1156 (6th Cir. 1991) (and cases cited therein). Plaintiff bears the burden of exercising due diligence in perfecting service of process and in showing that proper service has been made. *See Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996); *Jacobs v. University of Cincinnati*, 189 F.R.D. 510, 511 (S.D. Ohio 1999).

Upon a showing of good cause for the failure to effect timely service, “the court shall extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m); *Osborne v. First Union Nat’l Bank*, 217 F.R.D. 405, 408 (S.D. Ohio 2003). In the absence of a showing of good cause, the court has discretion to dismiss *sua sponte*, provided that the plaintiff has notice of the proposed action. *See Osborne*, 217 F.R.D. at 408; *United States v. Gluklick*, 801 F.2d 834, 837 (6th Cir. 1986), *cert. denied*, 480 U.S. 919 (1987).

Accordingly, Plaintiff is hereby **NOTIFIED** that the Court proposes to dismiss the Complaint against Defendants, without prejudice, due to Plaintiff’s failure to effect timely service of process of the summons and Complaint upon Defendants. Plaintiff, therefore, is **ORDERED** to show cause in writing within **TWENTY DAYS** of the entry date of this Order why the Complaint should not be dismissed without prejudice for failure of service of process.

IT IS SO ORDERED.

Date: 2/17/11

Timothy S. Black
Timothy S. Black
United States District Judge